Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	

COMMENTS
of the
RURAL TELECOMMUNICATIONS ASSOCIATIONS

Organization for the
Promotion and Advancement of
Small Telecommunications Companies

Rural Independent Competitive Alliance

Rural Telecommunications Group, Inc.

August 6, 2004

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SUMMARY

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), the Rural Independent Competitive Alliance (RICA), and the Rural Telecommunications Group (RTG) (collectively Rural Telecommunications Associations or Associations) submit the following interim plan for the Federal Communications Commission (Commission or FCC) to adopt and implement while the Federal-State Joint Board on Universal Service (Joint Board) and the FCC contemplate a long-term rural mechanism to succeed the plan adopted in the Rural Task Force Order. This plan represents a hard fought negotiated consensus among OPASTCO, RICA, and RTG. The interim plan does not represent the individual positions of these associations, but rather a compromised, negotiated and carefully crafted consensus aimed at creating minimum standardized criteria for eligible telecommunications carrier (ETC) applicants, providing sufficient support to both wireless and wireline ETCs, and enabling the Commission to better manage and reduce the future growth of the Universal Service Fund (USF) while it considers more long-term reforms for all ETCs serving rural service areas. Each element of this plan is interdependent and the Associations urge the Commission to adopt the plan in its entirety.

The Rural Telecommunications Associations share the Joint Board's concern that USF support for competitive eligible telecommunications carriers (CETCs) has increased dramatically since 2001 and the danger of excessive fund growth is now clear and present. The Associations also agree with the Joint Board that the potential for uncontrollable fund growth is compounded by the calculation of support under the current portability rules. The Associations, however, strongly disagree with the Joint Board's recommendation to limit

support to primary lines as a means of controlling the future growth of high-cost support.

The Rural Telecommunications Associations therefore submit the following interim plan as an alternative to the Joint Board's primary line proposal. The Associations' plan provides the appropriate approach to reduce the future growth of high-cost USF support, address the inequities in the current portability rules, and provide a much more efficient and fair distribution of support.

A. Regulators would apply a tiered series of safe harbor ratios for determining a wireless CETC's per-line support as an alternative to a primary line restriction.

Recognizing the need to control the growth of the USF, but without the detrimental impacts of a primary line limitation, the Associations propose movement toward a cost-based system for determining support for wireless CETCs that utilizes a tiered series of safe harbor ratios for determining their per-line support.

Tier IV Wireless Carriers - Carriers that have 100,000 or fewer subscribers would be eligible to receive 80 percent of the study area average per-line support received by the incumbent local exchange carrier (ILEC) that offers service to the customer.

Tier III Wireless Carriers - Carriers that have between 100,001 and 500,000 subscribers would be eligible to receive 40 percent of the study area average per-line support received by the ILEC that offers service to the customer.

Tier II Wireless Carriers - Carriers that have over 500,000 subscribers, but do not possess a national footprint would be eligible to receive 20 percent of the study area average per-line support received by the ILEC that offers service to the customer.

Tier I Wireless Carriers - Carriers with a national footprint would receive 0 percent support.

The proposed ratios are derived from a comparison of wireline and wireless investment data and the recognition that smaller stand-alone wireless carriers operating in high-cost, rural areas generally need more support. The ratios would serve as a "safe harbor"

level of support for wireless CETCs. That is, if a wireless CETC opts not to report its actual costs for the purposes of determining its per-line high-cost support, then it would be able to receive support based upon the wireline-to-wireless support ratio that applies to their particular "tier." However, if the wireless CETC believes that its actual costs would justify a higher level of support than it would receive under the safe harbor ratio, then it could choose to report its costs in order to receive a greater level of support, up to *either* the level of per-line support received by the ILEC offering service to the customer or the statewide average per-line support, whichever is greater. Wireless carriers would be allowed to submit a cost study using generally accepted accounting principles that sufficiently justifies their costs in a manner that approximates the results obtained by ILEC cost studies. In addition, wireline CETCs could also file cost studies under the plan. For wireless carriers that have obtained CETC status prior to the implementation of this plan, there would be a two year transition period, after which they would begin to receive support based either on the ratio that applies to their particular tier or based on their own costs.

Basing universal service support on primary lines is the wrong approach to controlling the growth of the USF. The statutory purpose of the high-cost universal service program is to support network infrastructure in order to ensure that telecommunications and information services in rural areas are comparable to those offered in urban areas and at affordable and comparable rates. Primary line-based support does not relate to what it actually costs a telecommunications carrier to deploy network infrastructure. Telecommunications service providers build networks that are engineered to serve an entire area and the disconnection of a line/number by a customer does not translate into a

corresponding reduction in cost for the carrier. If rural carriers receive support only for those lines/numbers designated as "primary" by the customer, they will not receive sufficient and predictable support that allows for the recovery of their costs of providing service in a high-cost area. Without sufficient and predictable support, rural consumers will ultimately not receive access to reasonably comparable services and rates as required by the Telecommunications Act of 1996.

B. Minimum Standardized ETC Designation Guidelines for Rural Service Areas:

The Associations' plan endorses four of the Joint Board's five proposed ETC eligibility criteria and recommends that the Commission adopt three additional guidelines for regulators to consider when determining whether a CETC designation application for a rural service area would be in the public interest. The following is a complete list of the combined proposed guidelines:

1. Whether or not the applicant has the adequate financial resources in order to provide quality services throughout the ETC designated service area.

2. The applicant's commitment and ability to provide the supported services throughout the ETC designated service area to all customers who make a reasonable request for service. This should include the submission of a formal build-out plan (which may be filed confidentially) for areas where facilities have not yet been built at the time the application is submitted. Additionally, regulators may require CETCs to explore the possibility of serving requesting customers for which the CETC has not yet extended its own network through resale of another carrier's service.

3. The applicant's ability to remain functional in emergency situations.

4. The applicant's commitment to utilize the USF funding it receives only to support infrastructure within the ETC designated service area.

5. The impact of the designation on the USF. For instance, regulators may also consider the overall level of per-line support provided to a specific ETC designated service area.

6. Whether or not such a designation would create the potential for rural creamskimming by allowing the applicant to serve only the low-cost, high revenue customers in a rural telephone company's service area.

7. Regulators may choose to impose consumer protection requirements as a precondition for designation as a CETC, provided that for wireless carriers such regulations do not violate Section 332(c)(3) of the Act.

C. The Benefits of the Rural Telecommunications Associations' Plan:

The plan is fair, simple and easy to implement. The ETC guidelines are uniform and straightforward. All potential ETC applicants know clearly what the eligibility criteria will be. Once an ETC designation is granted, the FCC and state commissions will apply the appropriate safe harbor ratio to determine the specific amount of per-line support that will be distributed to a wireless CETC. If the ETC applicant seeks more support than provided by the tiered safe harbor ratio, it may elect to perform a cost study and report its actual costs to justify a different per-line support amount. Because tiered support percentages are based on investment data from wireless and wireline carriers, the FCC and state commissions will lessen the potential for wireless CETC support windfalls and ensure that support is not excessive. As a result, the Associations' plan provides a more accurate and measured distribution of universal service support, addresses the inequities in the current USF portability rules, and gives the Commission much greater control over the future growth of the USF.

The Rural Telecommunications Associations' plan is being submitted by major telecommunications carrier associations which represent the small, rural wireline and wireless carriers that are committed to serving rural communities throughout the United States. The Associations' plan takes into account both the costs of providing wireless service

relative to wireline as well as the size of the wireless carrier when determining the appropriate support amount for wireless providers. By adopting this interim plan in place of the Joint Board's primary line recommendation, the Commission will protect the viability of the USF while continuing to further the goal of extending high quality, affordable wireline and wireless services throughout the rural parts of the country. This plan will serve to reduce the potential growth of the high-cost fund and ensure that all ETCs receive sufficient support to achieve affordable and reasonably comparable services and rates in rural areas, as required by the 1996 Act.

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COMMENTS
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RURAL TELECOMMUNICATIONS ASSOCIATIONS

The Rural Telecommunications Associations (the Associations)[1] hereby submit their interim plan in response to the Federal Communications Commission's (Commission or FCC) Notice of Proposed Rulemaking (NPRM) seeking comment on the Recommended Decision of the Federal-State Joint Board on Universal Service (Joint Board) regarding rules relating to high-cost support in competitive study areas, the rules regarding support for second lines, and the process for designating competitive eligible telecommunications

[1] The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) is a national trade association representing over 560 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members include both rural commercial and cooperative companies and together serve more than 3.5 million customers. All OPASTCO members are rural telephone companies as defined in the Act, and provide a wide range of communications services, including dial-up Internet access, broadband, wireless, competitive local exchange carrier (CLEC), long-distance and video services.
The Rural Independent Competitive Alliance (RICA) is a national trade association with more than 80 CLECs that are affiliated with rural ILECs and provide facilities-based service in rural areas throughout the United States.
The Rural Telecommunications Group (RTG) is a national trade association dedicated to promoting wireless opportunities for rural telecommunications companies. RTG's members have joined together to speed delivery of new, efficient, and innovative telecommunications technologies to the populations of remote and underserved sections of the country. RTG's members are small businesses serving or seeking to serve secondary, tertiary and rural markets. RTG's members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies.

carriers (CETCs).[2]

I. INTRODUCTION

On February 27, 2004, the Joint Board released its recommendation concerning the process for considering applications for eligible telecommunications carrier (ETC) status and the Commission's rules regarding high-cost universal service support.[3] The Joint Board recommended that the FCC adopt permissive federal guidelines for state commissions to consider when determining whether a carrier's designation as an ETC would be in the public interest. The Joint Board also recommended that the Commission limit the scope of high-cost support to a single connection that provides access to the public switched telephone network (PSTN). Lastly, the Joint Board declined to recommend that the Commission modify the basis of support in study areas with multiple ETCs and instead requested that the FCC allow the Joint Board and the Commission to further consider the issue.

The Rural Telecommunications Associations support most of the Joint Board's recommendations concerning minimum eligibility requirements for ETC applicants, but strenuously oppose the Joint Board's recommendation to limit support to primary lines as a means of controlling the future growth of high-cost support. The statutory purpose of the high-cost universal service program is to support network infrastructure in order to ensure that telecommunications and information services in rural areas are comparable to those offered in urban areas and at affordable and comparable rates. While in most cases, a rural

[2] *Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 04-127 (released June 8, 2004).

[3] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 19 FCC Rcd 4257 (2004) (Portability Recommended Decision).

ILEC is the only wireline carrier offering service in its territory, typically there are multiple wireless carriers licensed to provide services within that same rural area. In addition, unlike head-to-head competition between ILECs and CLECs, wireless service is used by rural consumers for mobility and security and serves as a complement to their fixed wireline service. Wireline and wireless services are equally important to rural consumers and having to choose one over the other would discriminate against the rural consumer.

Under the current USF regime, a CETC draws the same per-line support received by the ILEC serving the underlying area. However, the USF was never intended to provide a uniform subsidy to any carrier providing qualifying service in a rural area. The level of high-cost support received by ILECs is based not only on the cost of providing service but also on the size of the carrier. In the wireline environment, the largest ILECs that offer service in rural areas are nonetheless categorized as non-rural carriers, resulting in a different support calculation methodology than that used for small, rural ILECs. The rationale behind this approach is simple – large ILECs have resources and economies of scale available to them that make their ability to provide quality service in rural areas far less dependent on USF support. In particular, the large ILECs are able to internally average the low cost of their mostly urban territory with the higher cost of their rural areas, and this is recognized by the current USF regime. Similarly, large wireless carriers also have economies of scale, such as centralized back office operations, that small rural wireless carriers do not possess.

The problem with the current USF structure for wireless carriers is that it fails to account for either the wireless cost and pricing of service or the underlying size of the wireless ETC. Large wireless carriers are able to internally support their "rural" operations

far more readily than stand-alone rural-only wireless carriers. Indeed, many of the nationwide wireless carriers offer near-uniform pricing plans across the United States, proof that these carriers are "blending" their high and low cost service areas to develop pricing at a near single rate that is compensatory for that carrier.

In sharp contrast, there is a category of small, rural wireless carriers that provide service primarily to rural areas. As with rural ILECs, these small wireless carriers are focused on bringing quality service to rural areas and have historically built out their networks to a far greater extent in rural communities than the large, more urban-focused wireless carriers have. The large nationwide wireless carriers compete by driving down prices and using their market power to force rural wireless carriers to reduce roaming charges. As they do so, the ability of the smallest wireless carriers to not only compete, but to be able to continue providing service and expand their service offerings to the most rural portions of their markets, is being jeopardized.

The Associations' plan represents a precedent setting consensus of small, rural wireline and wireless carriers that are actually focused on the communications needs of rural communities. These carriers are truly dependent on external support mechanisms to ensure the continued availability of high quality services in the remote areas of the country that they serve. Like the current high-cost program for ILECs, the Associations' plan would take into account the costs of providing wireless service relative to wireline as well as the size of the wireless carrier when determining the appropriate support amount for commercial mobile radio service (CMRS) providers. It would also allow wireless carriers to receive support based on their own costs should they so choose. Moreover, the plan recommends strong but

reasonable eligibility criteria for ETC applicants in rural service areas to better ensure that future designations in these areas would serve the public interest. Thus, this plan would serve to control the growth of the high-cost fund and maintain its viability while still ensuring that all ETCs receive support that is sufficient to achieve affordable and reasonably comparable services and rates in rural areas, as the Telecommunications Act of 1996 (1996 Act, the Act) requires. Accordingly, the Associations urge the Commission to adopt its interim plan (Attachment A), as an alternative to a primary line limitation on support, without delay.

II. THE ASSOCIATIONS' PLAN, WITH ITS PROPOSED TIERED SUPPORT RATIOS AND OPTIONAL COST STUDY, PROVDES THE APPROPRIATE METHOD TO ADDRESS THE FUND GROWTH PROBLEM

A. The USF growth problem is a direct result of the portability rules which fail to provide a rational connection between the universal service support provided to CETCs and their need for support.

With the passage of time it has become clear that providing the ILEC's per-line support to all CETCs,[4] regardless of their cost structure or their regulatory status, is contrary to the Commission's universal service principle of competitive neutrality and has accelerated the growth of the high-cost fund. Many CETCs, for example, are exempt from rate and state entry regulation. This allows them to avoid the substantial costs associated with cost studies, rate cases, accounting obligations, separations requirements, and audit reviews. CETCs are also not typically held to the same service quality standards as ILECs. The Commission's identical support rule, however, permits CETCs to receive this support for every working loop/phone they serve in the ILEC's service area, regardless of whether the CETC's costs to

[4] 47 C.F.R. §54.307. The "identical support" rule allows CETCs to receive the same per-line support as ILECs, based on the ILEC's costs, instead of the CETC's costs.

provide service are below the national benchmark to qualify for support.

Section 254(e) of the 1996 Act requires that CETC support be used "only for the provision, maintenance, and upgrading of the facilities and services for which the support is intended" and "[a]ny such support should be explicit and sufficient to achieve the purposes of this section."[5] Congress understood that there are public benefits when a carrier can enter a market and provide an equivalent level of service at a lower rate. But when lower rates come as a result of portability rules that allow CETCs to receive excessive support above their costs, the public ultimately suffers from the dispersion of limited resources to additional carriers and higher universal service contributions which are ultimately paid for by consumers nationwide.

Congress never envisioned the scenario that has developed as a result of the FCC's interjection of competitive neutrality as an additional principle of universal service.[6] The current application of the identical support rule, however, demonstrates the fallacy of the Commission's interpretation of competitive neutrality. As Commissioner Abernathy identified:

> Requiring incumbent LECs, but no one else, to comply with costly regulations and to open their books to competitors raises obvious questions of competitive neutrality.[7]

The current portability rules also undermine the Commission's ability to enforce Section

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[5] 47 U.S.C. § 254(e).

[6] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 12 FCC Rcd 8776, 8801, ¶47 (1997).

[7] *2000 Biennial Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carrier: Phase 2*, CC Docket No. 00-199, *Amendments to the Uniform System of Accounts for Interconnection*, CC Docket No. 97-212, *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, *Local Competition and Broadband Reporting*, CC Docket No. 99-301, Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286, Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301, and 80-286, Separate Statement of

254(e). Specifically, CETCs can easily game the system…

> …by 'entering' a service territory as an eligible telecommunications carrier (ETC) using a combination of its own low cost facilities, where beneficial to the CETC, and resale of the ILEC's retail services where facilities-based service is not cost effective. Thus, ... a … carrier ... could obtain ETC status without incurring the costs, or providing the quality of service comparable to the ILEC's, and yet obtain per-line support at the ILEC's level. The ILEC's per line support would represent costs far in excess of those associated with the CETC's costs or service. The CETC effectively could receive a windfall…[8]

This regulatory disparity, coupled with the application of the identical support rule, has provided an irresistible temptation for competitive carriers. Even if the management of a competitive carrier knows that their costs are low enough to compete effectively without additional support, they are compelled by their fiduciary duty to seek ETC designation so as to maximize profits and avoid lost opportunities to obtain support. The United States Court of Appeals for the 5th Circuit, however, has already warned: "excessive funding may itself violate the sufficiency requirement in the Act."[9] The Commission should therefore eliminate the identical support rule and adopt the Associations' plan before the burden on the USF becomes too great. Implementing the Associations' plan will move the universal service portability rules toward compliance with Section 254(e), reduce the future growth of the fund, and assist the Commission greatly in preserving and advancing universal service while the Joint Board and FCC finish their work on a long-term rural mechanism to succeed the plan adopted in the Rural Task Force (RTF) Order.

Commissioner Kathleen Q. Abernathy, 16 FCC Rcd 19911, 20114 (2001).

[8] Comments of the Montana Telecommunications Association, CC Docket 96-45 (filed Nov. 3, 2000), pp. 3-4.

[9] *Texas Office of Public Utility Counsel v. FCC,* 183 F.3d at 412 (U.S.C.A. 5th Cir. 1999).

B. The proposed ratios provide a reasonable safe harbor for the cost differences between ILECs and wireless CETCs.

Once it has been determined that the designation of a given wireless carrier as a CETC would be in the public interest, it must be determined what level of USF support the CETC should be eligible to receive. It is imperative that the level of support received by all carriers – whether incumbent or competitive – has a reasonable relationship to the carrier's actual costs of providing the supported services throughout a given service area. Rural ILEC support is already directly linked to the carrier's actual costs, as rural incumbents are required to either perform cost studies or have their support based on formulas that are derived from similarly situated carriers' actual costs (the average schedule methodology). However, at present, all CETCs receive the same per-line support as the incumbent they are competing with, regardless of whether or not their actual costs bear any relationship to the ILEC's costs.

The costs for a wireless carrier to provide service over a given area are generally lower than the costs for an ILEC to provide service in the same area. Therefore, rather than wireless CETCs receiving the same level of per-line support as the ILEC in a particular study area, the Associations' plan would permit these carriers to receive a percentage of the total per-line support received by the incumbent.

Readily available industry data supports the presumption that wireless carriers' costs are lower than ILECs' costs. This is based upon ILEC and wireless networks as they currently exist. Large wireless carrier networks typically do not cover many sparsely populated and costly rural areas. In addition, wireless carriers provide a different level and

quality of service, do not have carrier of last resort obligations, and generally operate with minimal regulatory oversight.

Data from a November 2003 National Exchange Carrier Association (NECA) report to the FCC indicates that the national average capital investment per loop for all ILECs was $2,345.[10] In comparison, according to the year-end 2003 survey conducted by the Cellular Telecommunications & Internet Association (CTIA), the national average capital investment per reported subscriber for all wireless carriers was $955.[11] These figures indicate that, for every $100 invested in infrastructure by ILECs, wireless carriers invest approximately $40.

It is also important to consider the relative size of the wireless carrier that would be eligible to receive USF support. Small, rural carriers – wireline and wireless alike – do not benefit from economies of scale, as do large carriers. For instance, rural carriers have a much smaller base of customers, and thus a more limited ability to spread their operating costs. At present, the process for determining the level of USF support available to the Regional Bell Operating Companies (RBOCs) and other non-rural carriers recognizes this fact. As a result, these carriers receive a greatly reduced level of high-cost universal service support, as compared to rural ILECs. Therefore, it is crucial that any process for determining USF support levels for wireless CETCs also acknowledges their relative size, and thus their need for support.

Consequently, the Association's plan advocates the creation of a tiered series of ratios for determining wireless CETC support. Wireless carriers seeking ETC designation would

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[10] National Exchange Carrier Association, *Universal Service Fund Data: NECA Study Results, 2002 Report* (submitted Nov. 3, 2003).

[11] Dr. Robert F. Roche, Pramesh Jobanputra, Luis A. Rodriguez, *CTIA's Wireless Industry Indices, Semi-Annual Data Survey Results, A Comprehensive Report from CTIA Analyzing the U.S. Wireless Industry, Year-*

be placed into one of four tiers, based on the size of the carrier. The first three tiers would be similar to those established by the Commission in its rules on the deployment of enhanced 911 (E911) capabilities. A fourth tier is proposed to represent the smallest rural wireless carriers.

The FCC created three tiers to tailor its E911 deployment deadlines to the unique capabilities of various-sized wireless carriers.[12] The Commission recognized that larger wireless carriers had the capability to become compliant more rapidly than small or mid-sized carriers "because of their size and geographic scope."[13] As part of the E911 proceeding, the Rural Telecommunications Group advocated the inclusion of a fourth tier to represent small, rural wireless carriers.[14] While the Commission did not adopt a fourth tier for E911 deployment, it is included in this plan, since universal service policy has traditionally recognized the higher costs of small and rural carriers.

C. An 80 percent per-line support ratio is efficient and reasonable for Tier IV wireless CETCs with 100,000 or fewer subscribers.

Using 80 percent of the ILEC's per-line support for Tier IV wireless carriers will allow these small providers to elect to use an administratively efficient safe harbor rather than demonstrate their own costs.[15] The 80 percent safe harbor is reasonable and, as discussed *infra*, will have a nominal impact on the overall high-cost fund even in the unlikely

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End 2003 Results (rel. May 2004), p. 157.

[12] *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Rural Nationwide CMRS Carriers*, CC Docket No. 94-102, Order to Stay, 17 FCC Rcd 14841, 14847-14848, ¶¶ 22-23 (2002).

[13] *Ibid.*, 17 FCC Rcd 14843-14844, ¶¶ 8-11.

[14] *See Petition for Waiver and Request for Temporary Limited Stay of Section 20.18 of the Commission's Rules*, Rural Telecommunications Group (August 29, 2003).

[15] Pursuant to the Associations' proposal, a CETC may demonstrate its costs if it believes they are higher than the safe harbor level.

event that *all* Tier IV wireless carriers seek ETC designation. As the Commission and rural carriers take a closer look at Tier IV wireless carriers' costs, the Associations expect that an 80 percent safe harbor will be a practical solution for both reducing the high-cost fund and for allowing these small carriers to receive sufficient and predictable support more in line with actual costs.

The Associations are in the midst of collecting cost data from members in order to determine how rural wireless costs compare with wireline costs. Preliminary figures range above and below the 80 percent safe harbor, with some Tier IV wireless carriers having costs even higher than their landline counterparts. On average, however, the Associations believe the 80 percent figure is in line with its members' costs.

RTG notes that its rural members are vigorously pursuing digital overbuilds and expanding their rural service coverage. Consistent with longstanding federal universal service policies, Tier IV carriers are aiming to increase their rural subscribership penetration rates, offering comparable services to those offered by urban carriers. Implementing digital overbuilds and increasing coverage in previously unserved rural areas will obviously affect Tier IV carriers' costs. In addition, Tier IV carriers must comply with federal E911 and Communications Assistance for Law Enforcement Act (CALEA) requirements which also affect costs. Unlike larger regional and nationwide carriers, Tier IV carriers do not have the dense subscriber bases over which to spread out these costs. Thus, a higher percentage of the ILEC's per-line support is justifiable for Tier IV carriers. These rural cost factors must be taken into account as the Commission examines the efficacy of the safe harbor concept.

D. The cost study option affords CETC applicants the ability to submit a cost study to request more per-line support if the applicant believes the safe harbor support level would be insufficient.

The 1996 Act contemplates that universal service support is to be made available when necessary to ensure comparability of rates and services between rural and urban areas.[16] It also must be sufficient and predictable, and must only be used by the recipient to provide the supported services.[17] Section II (A) above describes how the present portability rules fail to meet any of these statutory principles, mainly because there is no connection between the support received by CETCs and their cost of providing the supported services.

The Associations' safe harbor ratios for wireless CETCs will provide the Commission with an interim measure that recognizes basic cost differences between wireline and wireless technology and the size of the wireless entity. This will provide a rational means to control the growth of the fund until the Joint Board and FCC complete their review of the current high-cost support rules for all ETCs in rural service areas. However, the Associations' plan also includes a provision by which a CETC may qualify for USF support based upon individual cost studies. Because the current support mechanism for rural service areas determines support based on a comparison of an ILEC's cost to a (frozen) national average cost benchmark, for non-ILECs to qualify for comparable support it will be necessary to establish cost study methodologies that produce similar results to ILEC cost studies.

For RICA member CLECs, this demonstration will be straightforward because of their affiliation with rural ILECs. Thus, these carriers have systems in place or available to produce cost studies consistent with Parts 32, 36, and 64 of the Commission's Rules.

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[16] 47 U.S.C. §254(b)(3).

Alternatively, they are able to provide the data necessary for application of the average schedule USF formulas.

For wireless CETCs, many of which are not familiar with the Commission's accounting and separations rules, the interim rules should require that the carrier's cost study represent its cost of providing the supported services utilizing generally accepted accounting principles. The cost study should also sufficiently rationalize the wireless CETC's costs in a manner that approximates the results obtained by ILEC cost studies. While it is impossible for a wireless carrier to follow the specific ILEC cost study rules, CMRS providers should submit sufficient data to support their costs. A rough analogy can be found in the Commission's average schedule rules which require that the schedules "simulate the disbursements that would be received by a company pursuant to Section 69.607 that is representative of average schedule companies."[18]

The Associations recognize that the Commission might have some concern that allowing CETCs to perform cost studies would again lead to excessive growth in the fund. The Associations do not believe there is any basis for such concern, because the rural CLECs represent a relatively small percentage of support going to CETCs,[19] and it is not likely that many wireless CETCs will develop and complete cost studies during the life of this interim plan. Nevertheless, out of an abundance of caution, the Associations propose the following

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[17] 47 U.S.C. §254(b)(5), (e).

[18] 47 C.F.R. §606(a).

[19] Approximately $8.7 million, or 6.5 percent of third quarter 2004 projected high-cost support payments to CETCs is going to wireline CETCs, with the remaining $125.5 million, or 93.5 percent, going to wireless CETCs. These figures are based on a conservative identification of known wireline vs. wireless CETCs listed on USAC's high-cost support projection summaries. *See*, Universal Service Administrative Company, *Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter 2004* (April 30, 2004), Appendix HC01.

cap on cost study supported USF for CETCs: Such support for a given CETC would not exceed the per-line support eligibility of the ILEC with which it competes, or the statewide average per-line support amount in each state in which it operates, whichever is greater.

E. The Associations' plan will reduce the future growth of high-cost universal service support.

Under the Associations' tiered support proposal, the federal universal service high-cost fund would be reduced by approximately $269 million per year.[20] Using current Universal Service Administrative Company (USAC) data,[21] a reduction of $269 million from the high cost portion of the USF would reduce the current fund by roughly 7.23 percent. The bulk of this reduction -- approximately 6.83 percent -- would come from Tier II wireless carriers that currently receive around $317 million in high-cost support per year. These "super-regional" Tier II carriers have the necessary economies of scale and centralized administrative capabilities to justify a reduction of the high-cost support they receive. This is consistent with the FCC's recognition that rural and non-rural carriers face differing universal service obstacles, necessitating a bifurcated rural/non-rural support mechanism.[22] Further savings would come from eliminating unnecessary support for nationwide Tier I carriers who are fully capable of supporting their forays into rural areas[23] due to their

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[20] The Associations' plan provides that competitive carriers that have ETC status at the time the plan takes effect would have a two-year transition period before their support would be reduced to the appropriate tiered safe harbor percentage or based on their own costs. Therefore, the estimated support savings concerning existing CETCs based on the safe harbor ratios would be phased in at the end of the second year following the plan's adoption.

[21] *Proposed Third Quarter 2004 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 04-1613 (June 7, 2004).

[22] In addition to its bifurcated rural/non-rural universal service support mechanism, the FCC is currently considering proposals to reduce high-cost universal service support for large "super-regional" carriers based on their larger sizes and resulting economies of scale. *See in re Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 04-125 (June 28, 2004).

[23] Nationwide wireless carriers generally concentrate on serving cities, suburban areas, and interstates in rural

massive economies of scale and their ability to recover their comparatively miniscule rural costs from their almost exclusively urban- and suburban-oriented customer bases.

Tier III carriers, like their bigger Tier II brethren, are large enough to both spread their costs and to have centralized administrative functions, justifying a reduction in support. Those Tier III carriers that concentrate on serving predominantly high- cost rural regions have the option to demonstrate that their costs are higher than the 40 percent safe harbor. Further, these larger Tier III carriers, unlike much smaller Tier IV carriers, would have the financial resources to pursue such a cost study if need be.

Tier IV wireless carriers receive a small portion of the high-cost fund. The Associations' plan provides Tier IV carriers with a higher percentage of the ILEC's support than the percentage of the ILEC's support allotted to Tier I, II, and III carriers. However, even with this higher percentage of the ILEC's support, the overall support received by Tier IV carriers has a nominal aggregate impact on the high-cost fund. Tier IV carriers, which receive 80 percent of the per-line support available to ILECs pursuant to the Associations' plan, consist of only about 150 carriers nationwide. The vast majority of these Tier IV carriers serve less than 10,000 customers. Tier IV carriers currently receive roughly just 0.42 percent of the overall high-cost fund. Under the Associations' proposal, this nominal percentage will be further reduced to only about 0.34 percent of the high-cost fund. Even assuming that almost all of the roughly 150 Tier IV carriers decide that it is necessary to seek ETC status, the Associations' estimate that this would only impact the high-cost fund by $40 million per year. Such an impact would represent just over 1 percent of the total fund.

In the long term, as arbitrage opportunities become less attractive or disappear under

the Associations' plan, one could expect these substantial reductions in the overall high-cost fund to continue, alleviating concerns over a ballooning USF. Eliminating or drastically reducing support for nationwide and super-regional carriers will discourage larger carriers from draining the fund for unnecessary support. Overall, the Associations' tiered support plan should significantly reduce the future growth of the high-cost fund and force carriers to make a rational decision regarding the pursuit of ETC status.

III. THE COMMISSION SHOULD REJECT THE JOINT BOARD'S RECOMMENDATION TO LIMIT SUPPORT TO PRIMARY LINES AND ADOPT THE ASSOCIATIONS' ALTERNATIVE PLAN

As part of its reasoning for why the FCC should adopt a primary line limitation and cap on per-line support, the Joint Board states that "support for competitive ETCs has increased dramatically since 2001, and the danger of excessive fund growth that the Commission recognized at the time of the RTF Order is now clear and present."[24] The Joint Board also states that the potential of uncontrolled fund growth is compounded by the calculation of support under the current rules.[25] The Associations agree with both of these points, but disagree strongly with the Joint Board's proposal for addressing them. Instead of addressing these problems indirectly and counterproductively through a primary line limitation, the FCC should confront them directly by abandoning the rules which permit wireless CETCs to receive per-line support that is identical to what the ILEC receives.

The Associations acknowledge the need to control the growth of the USF. However, revisions to the universal service portability rules must permit rural carriers to recover their investment in the network facilities needed to provide comparable rates and services to

[24] Portability Recommended Decision, 19 FCC Rcd 4290-4291, ¶ 79.

customers living in high-cost areas. High-cost support reflects the legitimate costs of rural ILECs serving their entire designated areas. Any reduction in high-cost support due to limiting support to primary lines would adversely affect the ability of rural carriers to continue delivering high quality, modern service at affordable rates to high cost consumers, contrary to the universal service objectives of the Act.

A. The primary line proposal is inconsistent with the necessity for service providers to construct networks.

The origin of the present universal service support rules can be traced to the "Ozark Plan," adopted by the states and the Commission in 1971, which recognized the necessity of increasing the interstate allocation in the separations manual in order for long distance service to provide more support for local in those areas most dependent on long distance.[26] In 1982 the manual was changed to establish a basic 25 percent allocation of common line costs to the interstate (all toll) jurisdiction, plus an additional interstate expense allocation depending on the costs of the LEC. Despite many changes since then, the mechanism remains one which recognizes that carriers with higher total cost must recover a greater percentage of that cost from sources other than end-user charges in order to allow rural carriers to charge rates that are reasonably comparable to urban rates.

The principal deviation from this sensible plan has been the identical support rule, which provides support to CETCs without even a claim of a rational nexus between the support provided and the need for that support to maintain reasonably comparable local rates. Now, to fix the extreme and rapidly growing burden on the fund created by the portability

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[25] *Ibid.*, 19 FCC Rcd 4285-4286, ¶ 67.

[26] Henck and Strassburg, A Slippery Slope, Greenwood Press, 1988, pp. 120-121.

rules, the Joint Board conditionally (assuming the administrative problems can be solved) proposes to further disassociate support from the cost of service with its primary line proposal.[27] Although the specifics are only vaguely defined,[28] apparently ILECs would continue to determine the cost of constructing their networks and divide that cost by their number of working loops. The resulting cost per loop would continue to be applied to the formula specified by Section 36.631 of the FCC's rules. For purposes of Section 54.307, however, the amount of support would be divided by one line per customer (without any definition of customer provided). At this point, the total amount of support provided to the ILEC does not change and the revision is transparent to its customers.

If additional ETCs are designated for all or part of the ILEC's study area, however, the customer would somehow report to somebody which carrier it considered "primary."[29] The carrier so designated, if not the ILEC, would then receive the amount of per-line support determined by the second calculation, and the ILEC's support would be decreased by that amount. Some of the many different scenarios under this scheme include:

1. Assume, for example, that 50 percent of the ILEC's customers designate other ETCs as their "primary line" provider. If 20 percent of the rural ILEC's total revenues are derived from federal USF, [30] then the ILEC will incur a 10 percent reduction in its total revenue. However, there will be little or no decrease in cost, because the ILEC is mandated to be willing and able to serve every consumer within its area.

2. If 40 percent of the ILEC's revenues are from local service charges, it may need to seek regulatory approval to increase those rates by 20 percent across the board.

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[27] Portability Recommended Decision, 19 FCC Rcd 4296, ¶ 93 *et seq*.

[28] The Joint Board provides no proposed rules.

[29] Portability Recommended Decision, 19 FCC Rcd 4280, ¶ 82.

[30] NECA data for the 2003-04 test period shows that the average NECA common line pool member receives 20 percent of their total revenues from federal USF.

3. Alternatively, the ILEC may seek to impose much higher rate increases on only those customers who do not designate them as their primary line provider.

4. Meanwhile, the CETCs will only be receiving per-line support for its lines designated as "primary."

5. The result is that no ETC in the area will receive support that is predictable, and most likely such support will not be "sufficient."

While the Fifth Circuit admonishes that the USF is intended to support customers not carriers,[31] if none of the carriers receive a stable and sufficient revenue stream, rural customers will not receive either comparable service or comparable rates.

The Recommended Decision argues that a primary line limitation on support would be more consistent with the goals of Section 254 of the Act than the present system.[32] At least 19 United States Senators and 19 members of the House of Representatives disagree. In bipartisan letters to Chairman Powell, dated April 6, 2004 and May 7, 2004, the Senators and Representatives state that "[n]ot only would it be unfair for rural consumers to face prices for second lines that would be far in excess of those charged in urban areas, but such an outcome would contravene the spirit and purpose of Section 254." The legislators also state "such a restriction would dramatically reduce incentives for the deployment and upgrade of facilities in rural areas."

In her speech at the National Association of Regulatory Utility Commissioners (NARUC) Winter Meeting, Commissioner Abernathy notes that universal service support is designed to fund investment in networks.[33] Similarly, in their Joint Separate Statement to the Joint Board's Recommended Decision, Commissioners Adelstein, Thompson, and Rowe

[31] Portability Recommended Decision, 19 FCC Rcd 4297, ¶ 96, citing Alenco.
[32] *Ibid.*, 19 FCC Rcd, 4282, ¶ 62.

correctly state that "[f]or at least seventy years, and both before and after 1996 when universal service principles were codified, universal service policies have supported the cost of networks in high cost areas."[34] Yet, the Joint Board's recommendation to limit support to primary lines only serves to frustrate this purpose.

Under a primary line limitation on support, the amount of funding an ETC receives apparently would be determined, in part, by the number of consumers that designate that carrier as their "primary line" provider. However, this primary line-based support does not relate to what it costs a carrier to deploy network infrastructure. As the Associations and many other commenters in the Joint Board's portability proceeding explained, service providers don't build lines, they build networks. For instance, rural ILECs and wireless carriers build networks that are engineered to serve an entire service area and the cessation of service by a customer does not result in a significant reduction in costs for the carrier.[35]

Building a network for a rural area involves a relatively long planning horizon and the creation of extra capacity to accommodate future growth in demand. The Commission cannot expect a rural telecommunications carrier serving a high-cost, sparsely populated area to make costly, long-term investments in their network, when the amount of support that it receives may begin to fluctuate radically and is no longer tied to its full network costs. If rural telecommunications carriers are reluctant to invest in their networks, the high level of service quality that customers of these carriers have come to expect will likely decline.

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[33] *Ensuring That ETC Designations Serve the Public Interest*, Remarks by Commissioner Kathleen Q. Abernathy, NARUC Winter Meeting, Washington, DC (Mar. 10, 2004), p. 5 (emphasis added).

[34] Portability Recommended Decision, Separate Statement of Commissioners Jonathan S. Adelstein, G. Nanette Thompson, and Bob Rowe, 19 FCC Rcd 4321 (emphasis added) (Joint Separate Statement).

[35] *See*, *Ibid.*, fn. 312: "The economics of providing telephone service results in substantial fixed costs for the network capable of providing service throughout the service area. Those costs do not vary significantly if the

Moreover, if the network deteriorates significantly, the reliability of the critical telecommunications infrastructure in rural service areas would be seriously compromised.

The Recommended Decision argues that a primary line limitation would fulfill the statutory principles of sufficiency and predictability since these principles do not provide that cost recovery should be guaranteed for particular carriers.[36] The Joint Board acknowledges that supporting a single connection may not ensure sufficient funding of every ETC, yet makes the unsubstantiated statement that it would still provide sufficient support for universal service.[37] The Associations fail to see how.

If a rural ILEC receives support only for those lines designated as "primary" by the customer, it will not receive predictable support that consistently allows for the recovery of its costs of providing service in a high-cost area. Without predictable support that consistently allows for full cost recovery, a rural ILEC will no longer be able to provide consumers with services and rates that are reasonably comparable to those offered in urban areas. If rural consumers are unable to receive access to reasonably comparable services and rates, then support is not sufficient, under the Act.[38]

The Joint Board notes that under its proposed approach, no rural carrier would lose any support unless a CETC captures primary connections from the ILEC.[39] Nevertheless, just the prospect of this loss of support will inevitably discourage investors and lenders from providing capital to small rural carriers for network investment. Network investments for these carriers involve large capital outlays for facilities that have lengthy depreciation lives.

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lines per customer location change."

[36] Portability Recommended Decision, 19 FCC Rcd, 4283-4285, ¶ 64-65.

[37] *Ibid.*, 19 FCC Rcd, 4285, ¶ 65.

[38] 47 U.S.C. §254(b)(3).

Carriers will be far more reluctant to make capital expenditures if the support levels they receive are neither predictable nor sufficient to achieve full cost recovery. Similarly, lending institutions do not look upon revenue instability favorably, and will be less likely to loan to rural operators under a primary line limitation. As one lending institution stated in their comments to the Joint Board, "if the capital markets believe rural telcos will not be able to recover their costs…funds for rural telecommunications will quickly dry up."[40]

Furthermore, without sufficient support to enable construction and operation of facilities necessary to provide the nine currently supported voice-grade services, carriers will lose much of their ability and incentive to make the costly and risky investments necessary to deliver high-speed and advanced services. This reduction in investment would erect a barrier to the provision of access to advanced services, which the Commission has sought to avoid. Thus, a primary line limitation is not only at odds with Section 254 of the Act,[41] but also Section 706 and the Commission's stated goal of "encourag[ing] the ubiquitous availability of broadband to all Americans."[42]

From a rural wireless carrier perspective, the concept of a primary line limitation on support raises a whole host of issues. Typically one person does not have multiple wireless phones that they carry with them. Thus, one person usually uses one wireless phone. Multiple wireless phones therefore may be "billed" to the same billing address, but the

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[39] Portability Recommended Decision, 19 FCC Rcd, 4284-4285, ¶ 65.

[40] Comments of the Rural Telephone Finance Cooperative in the Joint Board Portability proceeding, CC Docket No. 96-45 (filed May 5, 2003), p. 4.

[41] 47 U.S.C. §254(b)(2), (3).

[42] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, CC Docket No. 02-33, CC Docket Nos. 95-20, 98-10, Notice of Proposed

service is predominantly used by various individuals at various locations. It is routine for one of those phones to call another one of those phones because each individual is using each phone. None of the phones is considered "secondary" to the individual using the phone. Since the wireless phone serves the individual and not the billing address, the only "non-primary" wireless phone would be the second phone carried by the same individual - virtually none.

Wireless and wireline services are different and serve different needs. The vast majority of customers subscribe to both. The goal of USF is not to allow rural subscribers to decide whether they should be able to receive either wired or unwired services, but instead to ensure that they have access to the same types of services as urban subscribers at reasonably comparable rates. There is no basis (or even a proposal from the Joint Board) as to how a customer should make its primary line election.

In short, a primary line limitation on support would defeat the very purpose of universal service, which is to encourage infrastructure investment in areas where it would not otherwise be economically feasible to provide services at rates that are affordable and reasonably comparable to the services and rates offered in urban areas of the country.[43] Therefore, the FCC must reject the Joint Board's recommendation to limit the scope of support to a single connection that provides access to the public telephone network.

B. The Commission can control the growth of the USF, while still achieving the objectives of high-cost support, by eliminating the identical support

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Rulemaking, 17 FCC Rcd 3019, 3021, ¶ 3 (2002).

[43] 47 U.S.C. §254(e) requires that high-cost universal service support be used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." 47 U.S.C. §254(b)(3) states, in part, that consumers in rural and high-cost areas should have access to telecommunications and information services, including advanced services, that are reasonably comparable to those provided in urban areas and at reasonably comparable rates.

rule and substituting it with the Associations' interim plan.

As discussed in the summary and in more detail in Section II, the Associations have developed a fair, reasoned and easy to administer plan for determining wireless ETCs' support amounts that recognizes the differences between wireless and wireline carrier network costs. This plan, coupled with the adoption of stringent federal guidelines for ETC designations in rural service areas, will significantly curb the growth of the USF. However, unlike a primary line limitation, these solutions will continue to provide all ETCs with the sufficient support needed to provide rural customers with high-quality, modern services at affordable and reasonably comparable rates, as called for in the 1996 Act.

C. A primary line limitation on support would be detrimental to small businesses operating in high-cost areas and would jeopardize rural economic development and employment opportunities.

The Recommended Decision argues that it does not matter that second lines are often used for access to information services such as dial-up Internet access or fax services, since these are not supported services.[44] However, the Joint Board fails to acknowledge that Section 254(b)(3) of the 1996 Act calls for reasonably comparable access to telecommunications and information services, including advanced telecommunications and information services, at reasonably comparable rates.[45] If a primary line limitation on support is adopted, the FCC will be adopting a policy that works to obstruct the continued achievement of this statutory objective.

In March 2004, the Small Business Administration (SBA) Office of Advocacy

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[44] Portability Recommended Decision, 19 FCC Rcd 4282-4283, ¶ 63.

[45] *See*, Joint Separate Statement, 19 FCC Rcd 4319: "This section [of the 1996 Act] provides not only that *the rates for* services should be reasonably comparable, but also that *access* should be reasonably comparable. Moreover, the statute covers not just basic service, but also advanced telecommunications services and

released a survey of small businesses' telecommunication use and spending.[46] The SBA Survey found that more than one third of small businesses connect to the Internet through dial-up access.[47] Dial-up Internet access is also extremely important to remotely located consumers who may be telecommuting to otherwise inaccessible jobs.

In addition, the SBA Survey found that small firms are affected by telecommunications policies in a manner disproportionate to their size. Due to the higher per-unit costs of small businesses, telecommunications costs represent a larger share of small businesses' total costs, compared to larger firms.[48] Most small businesses in non-metropolitan areas are very small, averaging approximately eight employees per business.[49] The survey found that businesses with 10 to 499 employees faced a per-employee cost for local and long distance services of $20.99, while businesses with five to nine employees faced a per-employee cost of $50.18 and businesses with four or fewer employees faced a per-employee cost of $82.81.[50] Thus, a primary line limitation would only serve to increase the already disproportionate cost burden of telecommunications services that small businesses face compared to their large counterparts, thereby threatening these businesses ability to compete and survive.[51]

The smallest rural businesses represent the most vulnerable segment of the business

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information services."

[46] Steven B. Pociask, TeleNomic Research, LLC for Small Business Administration Office of Advocacy, *A Survey of Small Businesses' Telecommunications Use and Spending* (rel. March 2004). (SBA Survey)

[47] *Ibid.*, p. 44.

[48] *Id.*, p. 59.

[49] *Id.*, p. 20.

[50] *Id.*, p. 61.

[51] *See*, Joint Separate Statement, 19 FCC Rcd 4320: "Rural business customers would be particularly disadvantaged because they frequently have more than one line. Net costs for telephone service would increase significantly for many of these rural business customers. … These higher costs could severely affect small

community and they typically have the least ability to pass on increased costs to their customers in the form of higher prices. Few businesses can operate with only one phone line and the loss of support could place these companies at a competitive disadvantage with their urban counterparts, forcing some to relocate where rates are reasonable. Small businesses create jobs that are vital to the continued viability of fragile rural economies. In most rural areas, where small businesses make up the lion's share of the opportunities for employment and economic development, a primary line limitation would wreak havoc on these communities.

D. The implementation of a primary line restriction faces significant administrative hurdles, the costs of which would far outweigh the benefits.

The Recommended Decision rejects the possibility that a primary connection limitation is inherently unworkable.[52] Yet the Joint Board leaves the details of how a primary line limitation would operate in practice to the FCC, offering no concrete recommendations of their own. If there was an obvious way in which a primary line limitation could be implemented without undue burden and confusion to carriers and consumers, surely the Joint Board would have offered up at least the basic parameters of how it should work in practice. The fact that the Joint Board offers nothing in the way of guidance on how to practically implement its primary line recommendation is quite telling in that regard.

Numerous commenters in the Joint Board's proceeding, including the Associations,[53]

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business investment in rural areas and would be very likely to restrict rural economic development."

[52] Portability Recommended Decision, 19 FCC Rcd 4291-4292, ¶ 81.

[53] OPASTCO comments in Joint Board Portability proceeding, CC Docket No. 96-45 (fil. May 5, 2003), pp. 35-37, and RICA comments in the Joint Board Portability proceeding, CC Docket No. 96-45 (fil. May 5, 2003),

detailed the many administrative difficulties that would arise under a primary line policy.[54] In addition, the Joint Statement of Commissioners Adelstein, Thompson, and Rowe provides an excellent overview of the numerous administrative hurdles and issues that would need to be addressed before a primary line limitation could be implemented.[55]

For instance, even the seemingly simple task of defining the term "primary line" is problematic. If the definition is based on a household, how would residences with unrelated individuals be treated (ex. college roommates or families who take in boarders)? If the definition is based on an individual, what would stop a family from placing each of the lines it subscribes to under a different family member's name, so that they are all classified as primary?

Regardless of how a primary line is defined, when consumers in high-cost areas see the difference in rates between supported primary lines and unsupported non-primary lines, surely many will act in their self-interest, and "game" the system in a way that maximizes the number of discounted lines that they receive. Even if this abuse could be minimized through carrier enforcement, it is not the role of carriers to pry into the private living arrangements of their customers. Moreover, any type of "policing" system would likely be costly and onerous for small carriers to implement and divert resources away from infrastructure investment and quality customer care. It would also serve to ruin the goodwill that rural carriers have earned from their customers.

Furthermore, it does not serve the public interest to create an environment for ETCs that is similar to the market for long distance, where carriers will resort to marketing

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p. 25.

[54] *See,* Portability Recommended Decision, 19 FCC Rcd 4291, fn. 222.

gimmicks (ex. sending checks in the mail that result in a change of service provider when cashed) in order to get consumers to choose them as their primary line provider. The Joint Board states that they do not believe that competition for primary designations would disserve the public interest by diverting ETCs' resources from infrastructure investment to marketing and promotion.[56] The Associations strongly disagree. Carriers should not have to resort to these types of gimmicks in order to receive the necessary funding for continued network infrastructure investment. It would not serve the public interest to have a high level of "churn" among carriers vying to be a customer's designated primary line provider, when this would directly impact the support levels these carriers receive. This would result in highly unstable USF support levels that would disincent carriers from making long-term investments. This type of environment certainly does not engender the predictability and sufficiency of support that Congress called for in Section 254. In addition, as Commissioners Adelstein, Thompson, and Rowe correctly point out, "[p]ast problems with slamming in long distance competition will pale in comparison to those that could arise when carriers can collect funding for winning primary line designations."[57]

Lastly, the Recommended Decision states that rules distinguishing between primary and other connections are not unprecedented.[58] This is true, yet what the Joint Board does not mention is that the Commission's most recent attempt at crafting a workable primary/non-primary line distinction failed and was subsequently abandoned. Specifically, after adopting a policy of different primary and non-primary rates for price cap carriers'

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[55] Joint Separate Statement, 19 FCC Rcd 4323.
[56] Portability Recommended Decision,19 FCC Rcd 4292, ¶ 82.
[57] Joint Separate Statement, 19 FCC Rcd 4323-4324.

subscriber line charges (SLCs) in 1997, the Commission terminated the policy only three years later after observing the significant difficulties the price cap carriers were having with implementation and policing. When the Commission terminated the policy in 2000, it stated that getting rid of the primary/non-primary line distinction "will go a long way to eliminate the customer confusion that now exists" and "eliminate the costs associated with administering the distinction, which are ultimately borne by customers."[59] Having learned from this experience, the FCC wisely declined to adopt a primary/non-primary line distinction for rate-of-return carriers, taking into consideration that the administrative burdens would be even greater for small rate-of-return carriers than for price cap carriers.[60]

The FCC should not forget the lessons learned from the debacle created by primary/non-primary line SLCs and reject such a policy for universal service, which would have far more dire consequences. The Associations concur with Commissioners Adelstein, Thompson, and Rowe that any potential gains from restricting funding to primary lines will likely be outweighed by the administrative costs and the risks that necessarily follow an unauditable restriction.[61]

IV. THE COMMISSION SHOULD ADOPT STANDARDIZED MINIMUM CRITERIA FOR REGULATORS TO USE WHEN EVALUATING ETC

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[58] Portability Recommended Decision, 19 FCC Rcd 4291-4292, ¶ 81.

[59] *Access Charge Reform Order, Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96-262 and 94-1, Sixth Report and Order, *Low-Volume Long Distance Users*, CC Docket No. 99-249, Report and Order, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Eleventh Report and Order, 15 FCC Rcd 12962, 13002, ¶ 100 (2000) (CALLS Access Charge Reform Order).

[60] *Multi-Association Group (MAG) Plan Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Second Report and Order and Further Notice of Proposed Rulemaking, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifteenth Report and Order, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, Report and Order, *Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, Report and Order, 16 FCC Rcd 19613, 19636, ¶ 47 (2001).

[61] Joint Separate Statement, 19 FCC Rcd 4323.

APPLICATIONS FOR RURAL SERVICE AREAS

In adopting the 1996 Act, Congress recognized that areas served by rural telephone companies are different than those served by larger carriers. Congress generally favored competition, but recognized that introducing financially supported competition into some rural service areas that cannot otherwise naturally support competition may ultimately harm consumers. For this reason, Section 214(e)(2) specifically requires that regulators may only designate additional ETCs in areas served by a rural telephone company upon a specific finding that such a designation is in the public interest.

The Joint Board has recommended permissive federal ETC guidelines for state commissions to consider in ETC designation proceedings. The recommended guidelines are intended to assist state regulators in determining whether an ETC designation is in the public interest. The guidelines are also intended to improve the long-term sustainability of the USF by only allowing fully qualified carriers that are capable of, and committed to, providing universal service to be able to receive high-cost support. The Associations applaud the Joint Board's efforts in strengthening the ETC eligibility requirements and support the adoption of most of the Joint Board's proposed guidelines, as well as several others.

With respect to Tier IV wireless carriers (as defined in the summary and in Attachment A), the Associations urge regulators to streamline, expedite and reduce the expense associated with the ETC application process in both rural and non-rural service areas. Special consideration should be afforded to Tier IV wireless carriers because they are committed to bringing quality wireless service to traditional rural areas. These Tier IV carriers have historically built out their networks to a much greater degree in sparsely

populated rural communities as compared to the large national and regional wireless carriers that primarily focus their build out and service enhancements in densely populated urban and metropolitan areas. Given both the public benefit of small wireless carriers providing service in the sparsely populated rural portions of their markets and their limited financial resources, regulators are encouraged to streamline, expedite, and reduce the expense of the ETC application process for Tier IV carriers.

By way of example, regulators should process ETC applications of Tier IV wireless carriers as soon as reasonably possible. The FCC has previously committed to resolve an ETC designation application filed at the FCC pursuant to Section 214(e)(6) within six months of filing.[62] The FCC and state commissions should also strive to resolve Tier IV wireless ETC applications within the same six month timeframe. Processing procedures should be in place that streamline the information Tier IV carriers are required to submit and that will reduce the costs associated with defending a Tier IV carrier's ETC application. Further, regulators should adopt an ETC application form for Tier IV wireless carriers that recognizes their unique situation.

A. The applicant must demonstrate that it has adequate financial resources in order to provide quality services throughout the CETC designated service area.

The first ETC guideline recommended by the Joint Board and supported by the Associations would encourage state commissions to evaluate whether a CETC applicant has the financial resources and ability to provide quality services throughout the designated

[62] *See Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 00-208, ¶ 94 (rel. Jun. 30, 2000).

service area without relying primarily on high-cost support to make its business case.[63] The Associations share the Joint Board's concern that it would neither be prudent nor serve the public interest if a financially unsound carrier were to be designated as a CETC, receive universal service funding, and yet still be unable to achieve long-term viability that is sufficient to sustain its operations. The public interest would be better served by carefully reviewing the business plans of a CETC applicant to ensure that the applicant is capable of sustaining their operations for the long term.

Large CETC applicants should be subject to a higher level of financial scrutiny than small, rural applicants to determine if USF support is really necessary to support their rural operations. A lesser degree of scrutiny should be applied to small stand-alone Tier IV rural wireless carriers that have been operating within a portion of the designated ETC area for a significant period of time. These Tier IV carriers are committed to serving rural areas and in all likelihood will have met the financial criteria established by the Commission in order to obtain and keep their spectrum licenses.

In particular, the FCC and state commissions should use this guideline to evaluate those applicants who are using the universal service rules for regulatory arbitrage or as a means to prop-up communications businesses that rely, in large part, on the use of universal service support. High-cost support should not be used to create artificial competition in rural America. Its use is intended to ensure comparable rates and services in urban and rural areas in accordance with the principles of Section 254. The FCC should therefore encourage state commissions to follow this guideline to prevent highly-debt-laden and other

[63] Portability Recommended Decision, 19 FCC Rcd 4266, ¶ 22

questionable companies from receiving universal service support. It makes no sense to disrupt a rural service area by designating a carrier that does not have the financial strength to make a long-term commitment.

B. The applicant must demonstrate its commitment and ability to provide the supported services throughout the ETC designated service area to all customers who make a reasonable request for service.

As Commissioner Abernathy has properly emphasized, "an ETC must be prepared to serve all customers upon reasonable request and it must offer high-quality services at affordable rates throughout the designated service area."[64] The Associations therefore support the Joint Board's proposed ETC guideline that would encourage state commissions to require ETC applicants to demonstrate their capability and commitment to provide service throughout the designated service area to all customers who make a reasonable request.[65]

ETC applicants should be required, as part of the demonstration of their commitment to provide service throughout the designated service area, to file a formal build-out plan for areas where facilities have not yet been built out. A formal build-out plan is critical because provisioning a network that can serve all of the customers within the designated service area goes to the heart of what it means to be an ETC. A build-out plan should include a reasonable schedule, with target completion dates, for each specific build-out project that will lead to a network that provides coverage to 100 percent of the ETC applicant's designated area. The build-out plan will allow regulators to monitor the progress of the carrier's network construction and determine whether or not the ETC is meeting the goals

[64] Portability Recommended Decision, Separate Statement of Commission Kathleen Abernathy, 19 FCC Rcd 4306.
[65] *Ibid.*, 19 FCC Rcd 4266-4269, ¶¶ 23-29.

that it has agreed to. By monitoring the build out, regulators can ensure that ETCs are using their high- cost support for the purpose for which these funds were intended as required by the Act.

The Associations also recommend that regulators allow ETC applicants to file their formal build-out plan confidentially and/or under a protective order. This will prevent the applicant's competitors from using proprietary information to gain an unfair competitive advantage. Details of a carrier's business plan must be confidential. Lastly, the Associations support the Joint Board's recommendation that regulators be allowed to require ETC applicants to explore the possibility of serving requesting customers for which the requesting ETC has not yet extended its own network through resale of another carrier's service. Resale is critical to CETCs as it will allow market forces to determine when and where a CETC builds out its network within the designated service area without putting undue pressure on the USF.

C. The ETC applicant must demonstrate its ability to remain functional in emergency situations.

The Joint Board also recommended that the Commission adopt a guideline to require ETC applicants to demonstrate the ability to remain functional in emergency situations. The Joint Board stated that this is an important guideline because the "security of a carrier's network and the ability to protect critical telecommunications infrastructure should be a major consideration in evaluating the public interest."[66] The Associations agree. Regulators should evaluate an applicant's ability to function without an external power source, reroute traffic around damaged facilities, handle traffic spikes, etc. The Associations suggest that

ETCs be able to provide up to eight hours of alternative backup power in case of an emergency. This standard, along with wireless carriers' inherent ability to reroute traffic through multiple cell sites, should be considered as an adequate benchmark for wireless emergency capabilities.[67] An ETC applicant's ability to remain functional in emergencies is essential to public safety and national security and should be considered as part of a public interest determination.

D. The applicant must demonstrate its commitment to utilize the funding it receives only to support infrastructure within the ETC designated service area.

The Associations recommend as an additional ETC guideline that all ETC applicants be required to demonstrate their commitment to utilize universal service support specifically for infrastructure and supported services within the ETC's designated service area. In two recent ETC designation proceedings conducted by the FCC, the Commission took a step in the right direction by stating that it may institute an inquiry on its own motion to examine any ETC's records and documentation to ensure that the high-cost support the ETC receives is being used for its intended purposes and in the areas where it is designated. In addition, the FCC stated that designated carriers will be required to provide such records and documentation to the Commission and USAC upon request.[68]

Section 254(e) requires carriers receiving support to "use the support only for the

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[66] *Id.*, 19 FCC Rcd 4269-4270, ¶30.

[67] The mobile nature of wireless carriers' emergency capabilities, based on the Commission's E911 rules, augments wireless carrier emergency functionality.

[68] *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the Commonwealth of Virginia,* CC Docket No. 96-45, Memorandum and Order, 19 FCC Rcd 1563, 1584-1585, ¶ 46 (2004) (Virginia Cellular). *See also, Federal-State Joint Board on Universal Service, Highland Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the*

provision, maintenance, and upgrading of facilities and services for which the support is intended." Since the support received by rural ILECs is based almost entirely on their own actual past investments and expense payments, or reductions in other rates, it is easy to determine that the support has been used to provide the supported services within the rural ILEC's designated service area. However, there is no way to ensure that CETCs receiving support based on the incumbent's spending record are using it for its intended purposes.

Presently, CETCs are only required to file a letter with USAC certifying that the support they receive is being used for its intended purposes. They are not required to perform cost studies or provide any information about their infrastructure, build-out plans or costs. A CETC's certification letter does not provide the essential information necessary to determine if support is used to provide the supported services in the CETC's designated service area. The public interest requires more than an assumption that CETCs will use their support on infrastructure and supported services within the ETC designated service area. The Associations therefore recommend that the Commission adopt an additional ETC guideline that requires all ETC applicants to demonstrate their commitment to utilize universal service support specifically for facilities and the supported services within the ETC's designated service area.[69]

E. Regulators must consider the impact of the designation on the USF.

The Joint Board declined to recommend a specific cost-benefit test for the purpose of

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Commonwealth of Virginia, CC Docket No. 96-45, Memorandum and Order, 19 FCC Rcd 6422, 6441-6442, ¶ 43 (2004) (Highland Cellular).

[69] For example, in a decision by the Vermont Public Service Board designating wireless carrier RCC Atlantic as an ETC, the Board required RCC to file periodic reports to ensure that their support is devoted to the purposes intended. Specifically, RCC must demonstrate that its capital spending in Vermont is at least equal to its federal support in Vermont, plus a reasonable base level of spending. *See*, State of Vermont Public Service

making public interest determinations. However, the Joint Board did recommend that state commissions making public interest determinations could consider the level of high-cost per-line support to be received by ETCs.[70] The Associations support this recommendation and believe that regulators should consider the overall level of per-line support provided to a specific ETC designated service area.

The Commission has become increasingly concerned about the impact of the rapid growth in high-cost support distributed to CETCs on the USF.[71] The Associations share this concern and the most recent USAC quarterly fund size projections demonstrate this point.

Annualized *($Millions)*	**3rd Quarter 2003 Support**	**3rd Quarter 2004 Support**	**% Change 3Q 2003 – 3Q 2004**
CETC High-Cost Support			
Non-Rural	$52.9	$104.8	98%
Rural	$198.1	$432.1	118%
Total	$251.0	$536.9	114%
ILEC High-Cost Support			
Non-Rural	$734.9	$723.4	-2%
Rural	$2,428.3	$2,525.2	4%
Total	$3,163.1	$3,248.6	3%
All Company High-Cost Support			
Non-Rural	$787.7	$828.2	5%
Rural	$2,626.3	$2,957.3	13%
Total	**$3,414.1**	**$3,785.5**	**11%**

Board, *In re: Designation of Eligible Telecommunications Carriers Under the Telecommunications Act of 1996 (In re: RCC Atlantic, Inc. d/b/a Unicel)*, Docket No. 5918 (Nov. 14, 2003), p. 36.

[70] Portability Recommended Decision, 19 FCC Rcd 4274, ¶43.

Commissioner Martin is rightly concerned with supporting multiple competitors in areas that are prohibitively expensive for even one provider in that it "may make it difficult for any one carrier to achieve the economies of scale necessary to serve all of the customers in a rural area, leading to inefficient and/or stranded investment and a ballooning universal service fund."[72] Thus, it is critical that the USF be treated by state commissions and the FCC as a scarce national resource and be carefully managed to serve the public interest. Otherwise, the fund will grow to an unsustainable level and ultimately leave no carrier with sufficient support to provide universal service. Congress sought to have specific, predictable, and sufficient federal and state mechanisms to preserve and advance universal service.[73] Therefore, it is imperative for regulators to consider the ultimate sustainability of the high-cost universal service program as they evaluate CETC applications for rural service areas.

F. Regulators must continue to analyze whether or not an ETC designation for a service area less than the study area of a rural telephone company would lead to creamskimming by allowing the applicant to serve only the low-cost, high revenue customers in a rural telephone company's service area.

The Joint Board recommended that even though rural telephone companies are now allowed to disaggregate their support, the Commission should continue to support the procedures established in 1997 for redefinition of rural service areas.[74] The Associations support this recommendation. Section 214(e)(5) of the Act implicitly acknowledges that granting ETC status to companies willing to provide service throughout rural telephone

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[71] Virginia Cellular, 19 FCC Rcd 1577-1578, ¶ 31.

[72] MAG Plan Second Report and Order, Separate Statement of Commissioner Kevin J. Martin, 16 FCC Rcd 19770.

[73] 47 U.S.C. §254 (b)(5).

company study areas is most consistent with the goals of the Act. It recognizes that a "quid pro quo" of ETC designation in rural service areas is the willingness to provide ubiquitous service and assume the obligations that are entailed thereby. This is likely the reason for the requirement that both the FCC and state commission must first agree to a different service area definition, after taking into account the recommendations of a Federal-State Joint Board.

When the Joint Board evaluated this issue in 1996, it recommended that the Commission retain the current study areas of rural telephone companies as their service areas, and that smaller service areas be designated only upon careful analysis of the creamskimming potential of the application.[75] The current Joint Board recommends that these procedures remain in place. The Commission should therefore reaffirm its support for the Joint Board's position that study area-wide service should be the norm in the areas served by rural telephone companies. Maintaining the requirement for a creamskimming analysis is consistent with the Commission's recent decision denying ETC designation to a wireless carrier with a license area covering only the low-cost portion of a rural telephone company's study area.[76]

Before granting an ETC designation to a carrier at below the study area level, the state commission or the FCC must first determine that such a designation is in the public interest, consistent with the principles of universal service. The mere introduction of financially supported competition, or the belief that service area redefinition is the only way

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[74] Portability Recommended Decision, 19 FCC Rcd 4291-4294, ¶¶ 80–86.

[75] *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 179-180 (1996). Creamskimming occurs when competitors serve only the low-cost, high revenue customers in a rural telephone company's service area, thereby undercutting the rural ILEC's ability to provide service throughout the study area.

[76] Virginia Cellular, 19 FCC Rcd 1578-1579, ¶¶ 32-35.

for the competitor to receive ETC designation, is not reason enough. The consumers situated in the rural ILEC's remaining service area may be irreparably harmed. The language of Section 214(e)(5) contemplates ubiquitous service for consumers in rural service areas and a level playing field for all competitors.

G. Regulators may choose to impose consumer protection requirements as a precondition for designation as a CETC.

The last ETC guideline that the Joint Board recommended was that state commissions may impose consumer protection requirements as part of the ETC designation process. The Associations support this guideline so long as it is consistent with Sections 254 and 332(c)(3) of the Act. Imposing consumer protection requirements as part of the ETC designation process is consistent with "the public interest, convenience and necessity" to ensure that consumers are able to receive high quality, affordable and reasonably comparable services and rates.

H. The Commission should not impose a local usage requirement on ETCs.

The Joint Board has recommended that state commissions may consider how much local usage ETCs should offer as a condition of federal universal service support.[77] The Associations recommend that the Commission not adopt this proposed ETC guideline for prospective ETC applicants with bundled calling plans. Most wireless carriers and an increasing number of wireline carriers are offering bundled calling plans with flat monthly fees that do not distinguish between local and toll/long distance calls. These plans inherently have a local usage component that allows consumers to use a significant amount of minutes on local and/or long distance calls. Thus, there is no need to require an existing or

prospective ETC offering a bundled calling plan to designate local and long distance minutes, in order to create an illusion of a separate local usage component.

Even though the Commission determined in its First Universal Service Report and Order that local usage is one of the supported services,[78] the FCC has never prescribed an actual number of minutes that is necessary to fulfill the local usage requirement. The Associations urge the Commission to continue not to impose a minimum local usage requirement on carriers with bundled calling plans. The telecommunications world has changed significantly since local usage was included in the definition of universal service. Carriers today are moving away from distinguishing calls as local or toll, but instead towards flat-rate bundled calling plans that do not make such a distinction.

Consumers today want bundled local and long distance calling plans. Rather than requiring carriers providing bundled calling plans to separate out a local usage component, the FCC and state commissions should presume that there is a local usage component in these plans that meets the requirement in the definition of universal service, so long as the carrier is offering a bundled calling plan at comparable rates.

If the Commission does decide to include a minimum local usage amount as a consideration in ETC designations, then it must make clear to state regulators that they cannot preclude carriers form offering bundled plans as an alternative to consumers. The ETC should be permitted to meet this requirement with at least one of its calling plans, but it should not be a requirement of all rate plans.

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[77] Portability Recommended Decision, FCC Rcd 4271-4272, ¶35.

[78] Under the FCC's rules, local usage is defined as "an amount of minutes of use of exchange service, prescribed by the Commission, provided free of charge to end users. 47 C.F.R. §54.101(a)(2).

V. CONCLUSION

The Rural Telecommunications Associations urge the Commission to adopt its interim plan. The Associations represent the small, rural wireline and wireless carriers that are committed to serving rural communities throughout the United States. The Associations' plan takes into account both the costs of providing wireless service relative to wireline as well as the size of the wireless carrier when determining the appropriate support amount for wireless CETCs. The Associations' plan provides the appropriate approach to reduce the future growth of high-cost USF support, addresses the inequities in the current portability rules, and provides a much more efficient and fair distribution of USF support. By adopting this interim plan in place of the Joint Board's primary line recommendation, the Commission will protect the viability of the USF while continuing to further the goal of extending high quality, affordable wireline and wireless services throughout the rural parts of the country as the Joint Board and Commission contemplate a long-term support mechanism for rural service areas. This plan will ensure that all ETCs receive sufficient support to achieve affordable and reasonably comparable services and rates in rural areas, as required by the Telecommunications Act of 1996.

Respectfully submitted,

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August 6, 2004

ATTACHMENT A

The Rural Telecommunications Associations'[1] Plan: An interim universal service mechanism for wireless and wireline competitive eligible telecommunications carriers (CETCs) that would serve the public interest.

1. In order for a wireless carrier to be designated as an eligible telecommunications carrier (ETC) in an area served by a rural telephone company, the appropriate regulatory authority would be required to determine whether such designation would be in the public interest. Regulators would be expected to weigh the following factors when determining whether the public interest would be served:[2]

- Whether or not the applicant has the adequate financial resources in order to provide quality services throughout the ETC designated service area.
- The applicant's commitment and ability to provide the supported services throughout the ETC designated service area to all customers who make a reasonable request for service. This should include the submission of a formal build-out plan (which may be filed confidentially) for areas where facilities have not yet been built at the time the application is submitted. Additionally, regulators may require CETCs to explore the possibility of serving requesting customers for which the CETC has not yet extended its own network through resale of another carrier's service.
- The applicant's ability to remain functional in emergency situations.
- The applicant's commitment to utilize the high-cost funding it receives only to support infrastructure within the ETC designated service area.
- The impact of the designation on the Universal Service Fund (USF). For instance, regulators may also consider the overall level of per-line support provided to a specific service area.
- The commitments made by the applicant regarding quality of telephone service.
- Whether or not such a designation would create the potential for rural creamskimming by allowing the applicant to serve only the low-cost, high revenue customers in a rural telephone company's service area.
- Regulators may choose to impose consumer protection requirements as a precondition for designation as a CETC provided that for wireless carriers such regulations do not violate

[1] The Rural Telecommunications Associations consist of the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), the Rural Independent Competitive Alliance (RICA), and the Rural Telecommunications Group (RTG).

[2] These criteria are based collectively on the guidance provided in the Joint Board's Portability Recommended Decision, and also the FCC's Virginia Cellular and Highland Cellular ETC Designation Orders. *See, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 19 FCC Rcd 4257 (2004); *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Area in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563 (2004); *Federal-State Joint Board on Universal Service, Highland Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 6422 (2004).

Section 332(c)(3) of the Communications Act.

2. Once it has been determined that the designation of a given wireless carrier as a CETC would be in the public interest, it must be determined what level of USF support the CETC should be eligible to receive. It is imperative that the level of support received by all carriers – whether incumbent or competitive – has a reasonable relationship to the carrier's actual costs of providing the supported services throughout a given service area. Incumbent local exchange carrier (ILEC) support is already directly linked to the carrier's actual costs, as incumbents are required to either perform cost studies or have their support based on formulas that are derived from similarly situated carriers' actual costs (the average schedule methodology). At present, all CETCs receive the same per-line support as the incumbent, regardless of whether or not their actual costs bear any relationship to the ILEC's costs.

   The costs for a wireless carrier to provide service over a given area are generally lower than the costs for an ILEC to provide service in the same area. Therefore, rather than wireless CETCs receiving the same level of per-line support as the ILEC in a particular study area, this proposal would permit these carriers to receive a percentage of the total per-line support received by the incumbent.

   Readily available industry data supports the presumption that wireless carriers' costs are lower than ILECs' costs. This is based upon ILEC and wireless networks as they currently exist. Large wireless carrier networks typically do not cover many sparsely populated and costly rural areas. In addition, wireless carriers provide a different level and quality of service, do not have carrier of last resort obligations, and generally operate with minimal regulatory oversight.

   Data from a November 2003 National Exchange Carrier Association (NECA) report to the FCC indicates that the national average capital investment per loop for all ILECs was **$2,345**.[3] In comparison, according to the year-end 2003 survey conducted by the Cellular Telecommunications & Internet Association (CTIA), the national average capital investment per reported subscriber for all wireless carriers was **$955**.[4] These figures indicate that, for every $100 invested in infrastructure by ILECs, wireless carriers invest approximately $40.

3. It is also important to consider the relative size of the wireless carrier that would be eligible to receive USF support. Small, rural carriers – wireline and wireless alike – do not benefit from economies of scale as do large carriers. For instance, rural carriers have a much smaller base of customers, and thus a more limited ability to spread their

[3] National Exchange Carrier Association, *Universal Service Fund Data: NECA Study Results, 2002 Report* (submitted Nov. 3, 2003).

[4] Dr. Robert F. Roche, Pramesh Jobanputra, Luis A. Rodriguez, *CTIA's Wireless Industry Indices, Semi-Annual Data Survey Results, A Comprehensive Report from CTIA Analyzing the U.S. Wireless Industry, Year-End 2003 Results* (rel. May 2004), p. 157.

operating costs. At present, the process for determining the level of USF support available to the Regional Bell Operating Companies (RBOCs) and other non-rural carriers recognizes this fact. As a result, the non-rural carriers receive a greatly reduced level of high-cost universal service support, as compared to rural ILECs. Therefore, it is crucial that any process for determining USF support levels for wireless CETCs also acknowledges their relative size, and thus their need for support.

4. Consequently, this plan advocates the creation of a tiered series of ratios for determining wireless CETC support. Wireless carriers seeking ETC designation would be placed into one of four tiers, based on the size of the carrier. The first three tiers would be similar to those established by the Commission in its rules on the deployment of enhanced 911 (E911) capabilities.[5] A fourth tier would be added to represent the smallest rural wireless carriers.

   These tiers are as follows:

   Tier I Wireless Carriers – CMRS carriers with national footprints.[6]

   Tier II Wireless Carriers – Carriers that have over 500,000 subscribers, but do not possess a national footprint.[7]

   Tier III Wireless Carriers – Carriers that have between 100,001 and 500,000 subscribers.

   Tier IV Wireless Carriers – Carriers that have 100,000 or fewer subscribers.

   Note: In cases where a small wireless carrier has partnered with a larger wireless carrier, if the small carrier has the controlling ownership interest in the spectrum, it would be considered a stand-alone entity, and the appropriate tier would apply. If the larger carrier

[5] The FCC created three tiers to tailor its E911 deployment deadlines to the unique capabilities of various-sized wireless carriers. *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Rural Nationwide CMRS* Carriers, CC Docket No. 94-102, Order to Stay, 17 FCC Rcd 14841, 14847-14848, ¶¶ 22-23 (2002). The Commission recognized that larger wireless carriers had the capability to become compliant more rapidly than small or mid-sized carriers "because of their size and geographic scope." *Ibid.*, 17 FCC Rcd 14843-14844, ¶¶ 8-11. As part of the E911 proceeding, the Rural Telecommunications Group advocated the inclusion of a fourth tier to represent small, rural wireless carriers. While the Commission did not adopt a fourth tier for E911 deployment, it is included in this proposal, since universal service policy has traditionally recognized the higher costs of small and rural carriers.

[6] These carriers presently include: AT&T Wireless, Cingular Wireless, Nextel Communications, Sprint PCS, Verizon Wireless, and VoiceStream Communications d/b/a T-Mobile.

[7] As of year-end 2001, the wireless carriers that fell into this category – in order of size – included: ALLTEL, US Cellular, Western Wireless, Leap Wireless, Qwest, Centennial Cellular, CenturyTel, Dobson Communications, Triton PCS, American Cellular, Rural Cellular Corp., and Price Wireless. Since 2001, other wireless carriers that were originally classified as Tier III carriers now possess over 500,000 subscribers and would be considered Tier II carriers under this proposal.

has the controlling ownership interest in the spectrum, the small wireless carrier would not be considered a stand-alone entity, and the tier of the controlling carrier would apply.

5. Next, wireline-to-wireless support ratios would be established for each of these tiers. Specifically, the wireless carriers in Tier III would be eligible to receive 40 percent of the study area average per-line support received by the ILEC that offers service to the customer. This is based upon the finding that wireless carriers invest $40 in infrastructure for every $100 spent on infrastructure by ILECs (see Point #2). Tier IV carriers, which represent the very smallest rural wireless providers, would be eligible to receive twice the per-line support level available to Tier III wireless carriers, or in other words, 80 percent of the ILEC's study area average per-line support. Conversely, Tier II carriers would be eligible to receive half of the per-line support level available to Tier III wireless CETCs, or 20 percent of the ILEC's study area average per-line support. Finally, Tier I wireless carriers would not be eligible to receive any USF support. This recognizes the fact that the national scope of Tier I carriers makes it possible for them to successfully serve all of their customers without receiving USF support, even if they happen to serve some high-cost rural markets.

- Tier IV Wireless CETCs: Eligible to receive 80 percent of the study area average per-line support received by the ILEC that offers service to the customer.
- Tier III Wireless CETCs: Eligible to receive 40 percent of the study area average per-line support received by the ILEC that offers service to the customer.
- Tier II Wireless CETCs: Eligible to receive 20 percent of the study area average per-line support received by the ILEC that offers service to the customer.
- Tier I Wireless CETCs: Eligible to receive 0 percent of the study area average per-line support received by the ILEC that offers service to the customer.

6. The ratios would serve as a "safe harbor" level of support for wireless CETCs. That is, if a wireless CETC chose not to report its actual costs for the purposes of determining USF support, then it would be able to receive support based upon the wireline-to-wireless support ratio that applies to their particular "tier." However, if the wireless CETC felt that its actual costs would justify a higher level of support than it would receive under the safe harbor ratio, then it could choose to report its costs in order to receive a greater level of support, up to *either* the level of per-line support received by the ILEC offering service to the customer or the statewide average per-line support, whichever is greater. For wireless carriers that have obtained ETC status prior to the implementation of this plan, there would be a two year transition period, after which they would begin to receive support based either on the ratio that applies to their particular tier or on their own costs.

7. Over time, should numerous wireless CETCs choose to report their own costs, a robust universe of wireless cost data would be created. This data could be used to create an average schedule-like process for determining wireless CETC support. Such a process would more closely link the support levels wireless CETCs receive with their actual costs.

8. Small rural wireless carriers are committed to bringing quality wireless service to traditional rural areas and have historically built out there networks to a much greater degree in sparsely populated rural communities as compared to the large national and regional wireless carriers that primarily focus their build out and service enhancements in densely populated urban and metropolitan areas. Given both the apparent public benefit of small wireless carriers providing service in the sparsely populated rural portions of their markets and their limited financial resources, regulators are encouraged to streamline, expedite, and reduce the expense of the ETC designation process for Tier IV wireless carriers in rural and non-rural service areas.

9. In conclusion, this plan has a number of benefits:

- It is easy to manage.
- It would result in a more measured distribution of finite USF support, thereby controlling the overall growth of the fund.
- It would lessen the potential for large windfalls of support received by wireless CETCs, in excess of the CETC's actual cost requirements.
- It provides optionality to the CETC. Either they accept the safe harbor support level, or elect to perform a cost study and report their actual costs.
- It targets more support to small, rural wireless CETCs who most need it.
- It is based on factual investment data for wireline and wireless carriers.

CERTIFICATE OF SERVICE

I, Jeffrey W. Smith, hereby certify that a copy of the comments of the Rural Telecommunications Associations was sent by first class United States mail, postage prepaid, on this, the 6th day of August, 2004, to those listed on the attached list.

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